



House of Representatives

File No. 613

General Assembly

February Session, 2002

(Reprint of File No. 261)

Substitute House Bill No. 5434
As Amended by House
Amendment Schedule "A"

Approved by the Legislative Commissioner
May 3, 2002

AN ACT CONCERNING THE AFFORDABLE HOUSING LAND USE APPEALS PROCEDURE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (1) of subsection (l) of section 8-30g of the
2 general statutes is repealed and the following is substituted in lieu
3 thereof (*Effective October 1, 2002*):

4 (l) (1) Notwithstanding the provisions of subsections (a) to (j),
5 inclusive, of this section, the affordable housing appeals procedure
6 established under this section shall not be applicable to an affordable
7 housing application filed with a commission during a moratorium,
8 which shall be the [three-year] four-year period after (A) a certification
9 of affordable housing project completion issued by the commissioner is
10 published in the Connecticut Law Journal, or (B) after notice of a
11 provisional approval is published pursuant to subdivision (4) of this
12 subsection. Any moratorium that is in effect on the effective date of
13 this section is extended by one year.

14 Sec. 2. Section 12-81bb of the general statutes is repealed and the

15 following is substituted in lieu thereof (*Effective October 1, 2002*):

16 (a) As used in this section:

17 (1) "Residential property" means a single parcel of property on
18 which is situated a single-family residence or a multi-family building;
19 [in which the owner is an occupant;]

20 (2) "Affordable housing deed restrictions" means deed restrictions
21 filed on the land records of the municipality, containing covenants or
22 restrictions that require such single-family residence or the dwelling
23 units in such multi-family building to be sold or rented only to persons
24 or families whose income is less than or equal to eighty per cent of the
25 area median income or the state median income, whichever is less, and
26 that shall constitute "affordable housing" within the meaning of section
27 8-39a;

28 (3) "Long term" means a time period no shorter in duration than the
29 minimum time period for affordability covenants or restrictions in
30 deeds pursuant to subsection (a) of section 8-30g; and

31 (4) "Binding" means not subject to revocation, either by the owner or
32 a subsequent owner acting unilaterally, or by the owner or a
33 subsequent owner acting jointly with others, until the expiration of the
34 long-term deed restriction time period and enforceable for the
35 duration of the long-term deed restriction time period both by the
36 municipality and by any resident of the municipality.

37 (b) Any municipality may, by ordinance adopted by its legislative
38 body, provide property tax credits to owners of residential property
39 who place long-term, binding affordable housing deed restrictions on
40 such residential property in accordance with the provisions of this
41 section.

42 Sec. 3. Subsection (k) of section 8-30g of the general statutes is
43 repealed and the following is substituted in lieu thereof (*Effective*
44 *October 1, 2002*):

45 (k) Notwithstanding the provisions of subsections (a) to (j),
46 inclusive, of this section, the affordable housing appeals procedure
47 established under this section shall not be available if the real property
48 which is the subject of the application is located in a municipality in
49 which at least ten per cent of all dwelling units in the municipality are
50 (1) assisted housing, or (2) currently financed by Connecticut Housing
51 Finance Authority mortgages, or (3) subject to binding recorded deeds
52 containing covenants or restrictions which require that such dwelling
53 units be sold or rented at, or below, prices which will preserve the
54 units as housing for which persons and families pay thirty per cent or
55 less of income, where such income is less than or equal to eighty per
56 cent of the median income, or (4) mobile manufactured homes located
57 in mobile manufactured home parks or legally-approved accessory
58 apartments, which homes or apartments are subject to binding
59 recorded deeds containing covenants or restrictions which require that
60 such dwelling units be sold or rented at, or below, prices which will
61 preserve the units as housing for which, for a period of not less than
62 ten years, persons and families pay thirty per cent or less of income,
63 where such income is less than or equal to eighty per cent of the
64 median income. The Commissioner of Economic and Community
65 Development shall, pursuant to regulations adopted under the
66 provisions of chapter 54, promulgate a list of municipalities which
67 satisfy the criteria contained in this subsection and shall update such
68 list not less than annually. For the purpose of determining the
69 percentage required by this subsection, the commissioner shall use as
70 the denominator the number of dwelling units in the municipality, as
71 reported in the most recent United States decennial census. As used in
72 this subsection, "accessory apartment" means a separate living unit
73 that (A) is attached to the main living unit of a house, which house has
74 the external appearance of a single-family residence, (B) has a full
75 kitchen, (C) has a square footage that is not more than thirty per cent of
76 the total square footage of the house, (D) has an internal doorway
77 connecting to the main living unit of the house, (E) is not billed
78 separately from such main living unit for utilities, and (F) complies
79 with the building code and health and safety regulations.

80 Sec. 4. Section 8-30g of the general statutes is amended by adding
81 subsection (m) as follows (*Effective October 1, 2002*):

82 (NEW) (m) The commissioner shall, pursuant to regulations
83 adopted in accordance with the provisions of chapter 54, promulgate
84 model deed restrictions which satisfy the requirements of this section.
85 A municipality may waive any fee which would otherwise be required
86 for the filing of any long-term affordability deed restriction on the land
87 records.

This act shall take effect as follows:	
Section 1	<i>October 1, 2002</i>
Sec. 2	<i>October 1, 2002</i>
Sec. 3	<i>October 1, 2002</i>
Sec. 4	<i>October 1, 2002</i>

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Fund-Type	Agency Affected	FY 03 \$	FY 04 \$
GF - Savings	Judicial Dept.	Potential Minimal	Potential Minimal
GF - Cost	Econ. & Com. Development, Dept.	None	None

Note: GF=General Fund

Municipal Impact:

Effect	Municipalities	FY 03 \$	FY 04 \$
Savings	Various Municipalities	Potential Minimal	Potential Minimal

Explanation

This bill may result in a reduction of cases heard before the state's Superior Court. Exempting more municipalities from the affordable housing appeals procedure may lower the caseload for these courts, resulting in minimal savings to the Judicial Department.

The bill adds mobile manufactured homes located in mobile manufactured home parks and accessory apartments to the list of housing units that count toward an exemption from the affordable housing appeals procedure. This may make additional municipalities exempt from the procedure, and as a result, these municipalities may realize administrative and legal savings, as they will no longer have to defend the initial development decisions in court. The amount of these savings is expected to be minimal.

Additionally, the bill requires the Commissioner of the Department of Economic and Community Development (DECD) to establish model deed restrictions. It is expected that DECD can adopt the necessary

regulations within their current administrative capacity. This provision will have a minimal fiscal impact on municipalities.

House Amendment “A” adds mobile manufactured homes located in mobile manufactured home parks and accessory apartments to the list of list of housing units that count toward an exemption from the affordable housing appeals procedure, and requires DECD to establish model deed restrictions.

OLR Amended Bill Analysis

sHB 5434 (as amended by House "A")*

***AN ACT CONCERNING THE AFFORDABLE HOUSING LAND USE
APPEALS PROCEDURE*****SUMMARY:**

This bill makes several changes to the affordable housing appeals procedure law. It extends, from three to four years, the length of an appeals procedure moratorium a town can obtain. It also extends, by one year, any moratorium in effect on the bill's effective date (October 1, 2002). By law, a town qualifies for a moratorium by obtaining a certification from the economic and community development commissioner showing it meets a specific threshold of affordable housing units created since 1990.

The bill also adds deed-restricted mobile manufactured homes and accessory ("in-law") apartments to the list of affordable housing units that count toward a town earning an exemption from the appeals procedure. The deed restriction must (1) be recorded on the land record; (2) last 10 years; and (3) require the units to be sold or rented at prices so that individuals or families, whose income is at most 80% of the median income, will pay no more than 30% of their income. It requires the commissioner to produce model deed restrictions that satisfy these appeals procedure requirements.

Finally, the bill eliminates the owner-occupied requirement for local-option property tax credits triggered by an affordable housing deed restriction.

*House Amendment "A" adds deed-restricted mobile homes and accessory apartments to the list of affordable housing units that count toward a town earning an appeals procedure exemption. It also requires the commissioner to produce model deed restrictions that satisfy the appeals procedure restriction requirements and permits towns to waive deed restriction filing fees.

It also restores the exemption for affordable housing proposals from open space, parks, and playground zoning requirements. This leaves current law unchanged. The original bill made such housing proposals subject to these local requirements.

EFFECTIVE DATE: October 1, 2002

MOBILE HOMES AND ACCESSORY APARTMENTS

To count toward an appeals procedure exemption, mobile homes must be located in a mobile home park, and accessory apartments must be “legally approved,” presumably through local zoning procedures.

The bill defines an “accessory apartment” as a separate living unit that:

1. is attached to the primary unit of a house that has the external appearance of a single-family residence,
2. has a full kitchen,
3. has square footage no greater than 30% of the house footage;
4. has an internal doorway connecting the two units,
5. is not billed separately from the primary unit for utilities, and
6. complies with building code and health and safety regulations.

DEED RESTRICTION CHANGES

Removes Owner-Occupied Requirement for Local Tax Credits

The bill eliminates the owner-occupied requirement for local-option property tax credits triggered by an affordable housing deed restriction. Under current law, a town may adopt an ordinance providing such credits to owner-occupants of single-family or multi-family dwellings who place long-term affordable housing deed restrictions on the dwellings. By law, the deed restrictions must be covenants or restrictions filed on the land record requiring the dwellings to be sold or rented only to people whose income is 80% or less of the area or state median income, whichever is less. The restriction must last 40 years and cannot be revoked by the owner or subsequent owner until it expires.

Binding and Recorded Restrictions

The bill specifies that in order to count toward the procedure

exemption, deed restrictions to keep units affordable must be binding and recorded on the land record.

Fee Waiver

The bill permits towns to waive any fee that would otherwise be required to file an affordability deed restriction on the town land records.

BACKGROUND

Appeals Procedure

Under the procedure, a town bears the burden of proving certain facts in court if a developer appeals its decision rejecting a proposed affordable housing development. (Normally, developers bear this burden in land-use appeals.) The procedure applies to towns with less than 10% of their housing stock in affordable housing, as defined by law. Currently, the procedure applies to 137 towns, with the remaining 32 towns exempt (because they have at least 10% of their housing stock certified as affordable).

Procedure Moratorium

A town qualifies for a moratorium each time it adds certain types of affordable housing units that equal 2% of the total number of housing units it had as of the last 10-year census or 75 unit-equivalent points, whichever is greater. A unit-equivalent point is the value the law assigns to types of units. The lower the income level of the unit's tenant or buyer, the more points are awarded for that unit. For example, family units restricted for tenants with incomes at or below 80% of median income are awarded one and one-half points each. When the income level is restricted to 60% and 40% median, the units are awarded two and two and one-half points each, respectively.

Legislative History

The House referred the bill (File 261) to the Finance, Revenue and Bonding Committee on April 10, and the committee reported it favorably on April 17.

COMMITTEE ACTION

Select Committee on Housing

Joint Favorable Substitute Change of Reference

Yea 10 Nay 2

Planning and Development Committee

Joint Favorable Report

Yea 17 Nay 0

Finance, Revenue and Bonding Committee

Joint Favorable Report

Yea 45 Nay 0